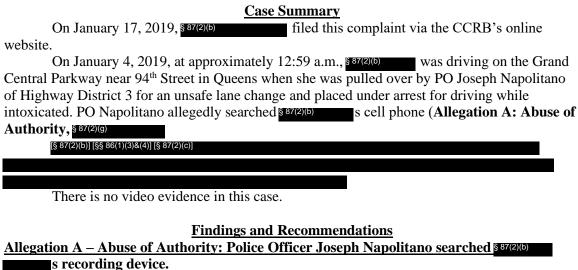
CCRB INVESTIGATIVE RECOMMENDATION

| Investigator: | | Team: | CCRB Case #: | ☐ Force | ☐ Discourt. | ☐ U.S. |
|-----------------------------|---|---|------------------|-------------------------|-----------------|------------|
| Cassandra Fenkel | | Squad #6 | 201900539 | ✓ Abuse | O.L. | ☐ Injury |
| Incident Date(s) | | Location of Incident: | - | Precinct: | 18 Mo. SOL | EO SOL |
| Friday, 01/04/2019 12:59 AM | | South East Corner 94th Central Parkway | Street and Grand | 115 | 7/4/2020 | 2/18/2021 |
| Date/Time CV Reported | | CV Reported At: | How CV Reported: | Date/Time | Received at CCI | RB |
| Thu, 01/17/2019 7:34 PM | | CCRB | On-line website | Thu, 01/17/2019 7:34 PM | | |
| Complainant/Victim | Type | Home Addre | ess | | | |
| | | | | | | |
| Subject Officer(s) | Shield | TaxID | Command | | | |
| 1. POM Joseph Napolitano | 21595 | 952044 | HWY 03 | | | |
| Officer(s) | Allegation | on | | Inve | estigator Recon | nmendation |
| A.POM Joseph Napolitano | Abuse: Police Officer Joseph Napolitano searched § 87(2)(b) s recording device. | | | | | |



(Board Review 02) testified that she was driving home from dinner when she was pulled over by PO Napolitano shortly after merging onto the Grand Central Parkway. \$87(2)(b) pulled over immediately. PO Napolitano approached \$87(2)(b) s front driver's side window and asked where she was coming from. \$87(2)(b) stated that she was coming from dinner and acknowledged consuming two drinks. PO Napolitano ordered \$87(2)(6) vehicle and instructed her to perform a sobriety test which involved looking at a light. was placed under arrest for driving while intoxicated and put into the backseat of PO Napolitano's vehicle. \$27(2)(b) approximated that PO Napolitano's vehicle was parked eight feet behind her vehicle. PO Napolitano returned to \$87(2)(b) s vehicle, entered it, and sat inside for approximately 30 minutes until an additional unit arrived. During this time, \$87(2)(6) observed PO Napolitano lean toward her front passenger's seat, where her purse and cell phone were located, but could not otherwise distinguish what PO Napolitano was doing inside her vehicle. Approximately two days after her arrest, \$87(2)(b) went into her photographs on her Samsung LG cell phone, at which point she noticed a "selfie" of PO Napolitano (Board Review 03). Aside from this photograph, \$87(2)(b) had no other indication that PO Napolitano accessed the contents of her phone. §87(2)(b) did not have any password on her cell phone and testified that it therefore could be accessed by anyone.

PO Napolitano (Board Review 04) testified that he arrested \$87(2)(b) stated that she needed to call her husband and her union delegate because she was a \$87(2)(b) . PO Napolitano asked \$87(2)(b) if her cell phone was inside her vehicle, and noted that procedurally speaking, valuable property such as a cell phone should not be left inside a vehicle. PO Napolitano returned to \$87(2)(b) s vehicle, retrieved her cell phone from the center console, and returned to his vehicle after a few minutes. PO Napolitano held \$87(2)(b) s phone in his hand and in his lap. PO Napolitano denied that he ever accessed or searched the digital contents of \$87(2)(b) s cell phone and denied that he took any photographs using \$87(2)(b) s cell phone. PO Napolitano provided \$87(2)(b) with her cell phone at the \$112^{th}\$ Precinct stationhouse, where she was permitted to call her husband and union delegate. PO Napolitano was presented with the photograph provided by \$7(2)

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(Board Review 03) and identified himself as the officer depicted in it. PO Napolitano testified that the photograph was taken in his vehicle because he recognized the red glow of its dome light. PO Napolitano had no further recollection of having ever accessed the contents of serious s cell phone and PO Napolitano was unable to explain the circumstances of the photograph.

According to <u>People v. Weissman</u>, officers are generally required to have a warrant to search the digital contents of an individual's phone (People v Weissman, 46 Misc 3d 171 [Crim Ct, New York County 2014]) (Board Review 05).

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first complaint to which \$87(2)(b) has been a party (Board Review 06).
- PO Napolitano has been a member of service for 7 years and has been a subject in two CCRB complaints and three allegations, of which two were substantiated.:
 - 201703942 involved substantiated allegations of flashlight as club and physical force against PO Napolitano. The Board recommended charges and the NYPD has not yet imposed discipline.

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- A Notice of Claim Inquiry was submitted to the NYC Comptroller's Office on April 25, 2019, and will be included in the case file upon its receipt (Board Review 07).

| • [§ 87(2)(b)] [| §§ 86(1)(3)&(4)] [§ 87(2)(c)] | | |
|----------------------------|-------------------------------|--------------------|------|
| Squad No.: | <u>#6</u> | | |
| Investigator: _ | Signature | Print Title & Name | Date |
| Squad Leader: ₋ | Signature | Print Title & Name | Date |
| Reviewer: | Signature | Print Title & Name | Date |

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